

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

ESTATE OF JERMAINE CLAYBROOKS,
by Co-Special Administrators,
JOAN McCANTS and KEYANNA ALLEN,
BIOLOGICAL MINOR CHILDREN
J.J.C., by and through KEYANNA ALLEN,
as parent and guardian, and J.D.C., by and
through MARKIA A. LOVE, as parent and
guardian,

Plaintiffs,

**FEDERAL RULE OF CIVIL
PROCEDURE 26(f) REPORT**

v.

CITY OF MILWAUKEE,
POLICE CHIEF EDWARD FLYNN,
MILWAUKEE POLICE OFFICERS JOHN SCHOTT,
MARTEZ BALL, and JOHN IVY, WEST ALLIS
POLICE OFFICERS TODD KURTZ, and
P.O. DANIEL DITORRICE, and SPECIAL AGENT
JAMES KRUEGER, Drug Enforcement Agency,

Case No. 19-CV-160

Defendants.

Pursuant to the Court's Notice for the Federal Rule of Civil Procedure ("FRCP") 16 Scheduling Conference, Counsel for Defendants respectfully submit their joint FRCP 26(f) Report following their FRCP 26(f) Conference, which was conducted on April 13, 2020 at 11:30 a.m. Due to circumstances, including COVID-19, all parties were not able to meet and confer prior to filing this report. However, Counsel for Defendants Kurtz and Dittorrice, conferred with Plaintiff McCants via phone on April 9, 2020.

I. Nature of the Case

The Plaintiffs have commenced a federal civil rights action under the Fourth and Fourteenth Amendments to the Constitution of the United States and Title 42 of the United States Code, Section 1983. Plaintiffs bring this action to obtain compensatory damages, punitive damages, attorneys' fees, costs and equitable relief for the serious personal injuries and resulting death of Jermaine Claybrooks, who they claim was unlawfully subjected to excessive force when he was shot over fourteen times on March 16, 2017 by Defendants John Schott, Martez Ball, John Ivy, Todd Kurtz, Daniel Dittorrice and James Krueger.

Defendants City of West Allis Police Officers Kurtz and Dittorrice (collectively the “West Allis Defendants”) maintain that any use of force by them was reasonable and lawful, given the circumstances. The West Allis Defendants also maintain that their actions are protected by the defense of qualified immunity.

Defendants City of Milwaukee Police Officers Schott, Ball and Ivy (collectively the “Milwaukee Defendants”) maintain that any use of force by them was reasonable and lawful, given the circumstances presented to them by Mr. Claybrooks. The Milwaukee Defendants also maintain that their actions are protected by the defense of qualified immunity.

II. Any Contemplated Motions

The Defendants anticipate bringing a motion for summary judgment regarding all claims raised against them. The parties also reserve the right to seek leave to amend pleadings by motion, if a stipulation cannot be reached.

III. Discovery Plan

A. What changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made.

The parties will make their FRCP 26(a) initial disclosures by **May 12, 2020**. The parties do not anticipate any changes to the form or requirement for the disclosures.

B. The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.

1. The subjects on which discovery may be needed:
 - a. The factual circumstances regarding the subject incident; and
 - b. The injuries/damages sustained by the Plaintiff.
2. When discovery should be completed.

The parties expect that all discovery should be completed by December 1, 2020

3. Whether discovery should be conducted in phases or limited to or focused on particular issues.

Not applicable.

C. Any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced.

The parties do not anticipate any issues about disclosure or discovery of electronically stored information.

D. Any Issues About Claims Of Privilege Or Of Protection As Trial-Preparation Materials, Including – If The Parties Agree On A Procedure To Assert These Claims After Production – Whether To Ask The Court To Include Their Agreement In An Order.

The parties do not anticipate any issues about claims of privilege or protection of trial-preparation materials. The parties anticipate filing a stipulation and proposed order regarding confidentiality of discovery materials.

E. What Changes Should Be Made In The Limitations On Discovery Imposed Under These Rules Or By Local Rule, And What Other Limitations Should Be Imposed.

The parties disagree about whether it will be necessary to exceed the 10-deposition limit set forth in FRCP 30(a)(2)(A)(i) and FRCP 31(a)(2)(A)(1). However, the parties will work in good faith to agree on the number of depositions, and will seek guidance from the Court, if necessary.

F. Any other orders that the court should issue under FRCP 26(c) or under FRCP 16(b) and (c).

The following are our proposed cut-off dates with respect to various issues in this case:

1. Filing of Initial Disclosures: May 12, 2020
2. Plaintiffs' Expert Disclosures: August 7, 2020
3. Defendants' Expert Disclosures: October 1, 2020
4. Cut off date for Discovery: December 1, 2020
5. Dispositive Motions: January 4, 2021

Dated this ____ day of April, 2020

Plaintiffs, Estate Of Jermaine Claybrooks
by Co-Special Administrators

By: _____

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Dated this 21st day of April, 2020

**Counsel for Defendants John Schott,
Martez Ball, And John Ivy**

By: _____

/s/ Susan E. Lappen
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Dated this 21st day of April, 2020

**Counsel for Defendants Todd Kurtz and
Daniel Dittorrice**

By: _____

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